

**BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Petition for)
Reinstatement of Revoked Certificate of:)
)
David Yedidsion, M.D.)
)
Physician's and Surgeon's)
)
)
Respondent)
_____)

File No. 20-2003-153373


DECISION

The attached **Proposed Decision** is hereby adopted as the Decision and Order of the Division of Medical Quality of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on September 7, 2004

IT IS SO ORDERED August 5, 2004 .

MEDICAL BOARD OF CALIFORNIA

By: 
Steven Rubins, M.D.,
Chair
KEYBOARD(Panel A or Panel B)
Division of Medical Quality

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for
Reinstatement of Revoked Certificate of:

OAH NO. N2004040080

DAVID YEDIDSION, M.D.
10833 Wilshire Boulevard
Los Angeles, CA 90024

Physician and Surgeon's
Certificate No. A-38412

Petitioner.

PROPOSED DECISION

William O. Hoover, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on May 18, 2004, in Sacramento, California.

David Yedidsion, M.D. ("Petitioner") appeared and represented himself.

Stephen Borman, Deputy Attorney General, appeared on behalf of the Attorney General of California.

Evidence was received and the matter submitted on May 18, 2004.

FACTUAL FINDINGS

1. On May 10, 1982, Petitioner was issued Physician and Surgeon's Certificate No. A-38412 by the Medical Board of California ("Board"). On November 11, 1998 petitioner's Certificate was suspended following his criminal conviction and sentencing, pursuant to Business and Professions Code section 2236.1.

2. On May 15, 2000 the Board filed an Accusation (Case No. 17-96-67592, OAH No. L-2000010372) alleging multiple violations of the Business and Professions Code, which resulted in an evidentiary hearing before an administrative law judge ("ALJ") on April 25, 2000. The Board adopted the ALJ's proposed decision and issued its decision revoking petitioner's Certificate effective July 5, 2000. On or about April 1, 2004, the Board received petitioner's Petition for Reinstatement of petitioner's Certificate that was dated December 4, 2003.

3. The revocation of petitioner's Certificate was based on his convictions on June 5, 1998, in two distinct federal indictments, of multiple violations of Title 18, United States Code, section 1341 (mail fraud-10 counts) and section 1001 (knowingly making false material statements-2 counts).

4. The Board sustained causes for discipline for violations of Business and Professions Code section 2236 (felony convictions involving moral turpitude and substantially related to the qualifications, functions and duties of a licensee), section 2234(e) (unprofessional conduct-dishonest and corrupt acts), section 2261 (knowingly making or signing false Medicare claims) and section 810 (false/fraudulent insurance claims). Petitioner was also ordered to pay \$5,077 as the reasonable costs of investigation and enforcement.

5. The factual findings in the prior disciplinary action describe the earlier events leading to petitioner's request for reinstatement and are *res judicata* in this matter. The pertinent findings are, therefore, recited below and incorporated as factual findings herein:

"2. On May 10, 1982, the board issued Physician's and Surgeon's Certificate number A38412 to respondent. At all times relevant to the instant proceedings, respondent's license was in full force and effect. Respondent's license was, however, automatically suspended, pursuant to Business and Professions Code section 2236.1, subdivision (a). The automatic suspension became effective on November 11, 1998.

"3. Since approximately August, 1984, respondent was enrolled as a medical provider in the Medicare program and was entitled to submit billings for Medicare claims. From January 1992 to May 1995, respondent knowingly submitted false billings to Medicare for the treatment of patients. There were two kinds of false billings submitted: 1) bills for reimbursement for services which respondent never rendered; and 2) inflated bills which charged Medicare for more expensive procedure codes than the services provided, if provided at all. In fact, many of the bills for services which were not rendered were charges for home visits to: (1) persons who had died before the date of the claimed services; (2) persons who resided in board and care or skilled nursing facilities which had barred respondent from their facilities before the date of the claimed services; (3) persons who lived in other states or in areas distant from Los Angeles on the date of the claimed services; (4) persons who were incarcerated on the dates of the claimed services; (5) persons receiving treatment at hospitals that had no affiliation with

respondent on the date of the claimed services; and (6) persons who were not residing in a private residence on the date of the alleged home visits.

“Respondent’s submissions of false bills caused approximately \$700,000 in fraudulent billings to be submitted to Medicare for payment.

“4. Based on the conduct set forth in Finding 3, above, in May 1997, a federal grand jury issued indictment number CR 98-97-RSWL against respondent charging him with 20 felony counts of mail fraud in violation of Title 18, United States Code, section 1341.

“On June 5, 1998, pursuant to a negotiated plea agreement, respondent withdrew his not guilty pleas and entered pleas of guilty to counts 1 through 10 of the indictment.

“The crimes for which respondent was convicted were crimes of moral turpitude, directly and substantially related to the qualifications, functions and duties of a licensed physician and surgeon.

“On November 11, 1998, respondent was sentenced to 24 months imprisonment and ordered to pay a \$50,000 fine and to make restitution to the Department of Health Services in the amount of \$311,000. Upon release from imprisonment, respondent was placed on supervised release for a term of two years on certain terms and conditions. Respondent served his imprisonment in a detention facility and halfway house from May 1, 1998 through January 26, 2000. Accordingly, respondent is on federal “supervised release”, probation, until January 25, 2002.

“5. In 1994, both prior to and just after the Northridge, California earthquake, respondent owned a condominium in Northridge, California, which he rented out. Following the Northridge earthquake, respondent submitted a loan application for disaster assistance to the Small Business Administration for a \$47,000 loan. Respondent made two material false statements in his loan application. First, on or about February 15, 1994, he submitted a false “Verification of Personal Property Damage” form, which indicated that he suffered \$30,600 worth of personal property damage. Secondly, on or about August 30, 1994, respondent submitted a false bill from “Action Contractor” which listed \$31,450 worth of repairs marked “paid in full”. In reality, the bill was false and respondent never spent \$31,450 to repair his condominium.

“6. Based on the conduct set forth in Finding 5, above, on May 7, 1998, a federal grand jury issued indictment number CR 98-479 against respondent charging him with two felony counts of knowingly making material false statements, in violation of Title 18, United States Code (“U.S.C.”), section 1001.

“The June 5, 1998 negotiated plea agreement mentioned in Finding 4, above, resolved this matter along with the indictment number CR- 98-97-RSWL matter. As in the CR-98-97-RSWL matter, respondent withdrew his not guilty plea and changed his

plea to guilty of two counts of violating 18 U.S.C., section 1001. Respondent's sentence in this matter was run concurrently to the sentence imposed in indictment number CR-98-97-RSWL. (See Finding 4, above.)

"Respondent's convictions were for crimes involving moral turpitude substantially related to the qualifications, functions and duties of a licensed physician and surgeon.

"7. Respondent was incarcerated at the time he entered his plea and he remained incarcerated until released on January 26, 2000. Respondent was informed by his attorney and believed that his attorney in the criminal matter had duly notified the board that the aforementioned indictments were brought against him and that he had entered guilty pleas to ten of the twenty counts alleged in the first indictment and to the two counts alleged against him in the second indictment.

"8. Respondent expresses remorse for his unprofessional conduct and claims to be rehabilitated. Respondent, however, presented no evidence, other than his own claim(s), to prove he is indeed rehabilitated. He did not take any continuing medical education courses during his term of incarceration and he has not yet completed his criminal probation. Given the nature and severity of respondent's convictions, it would take compelling evidence of rehabilitation to support a grant of probation: Respondent failed to provide such evidence."

6. Petitioner successfully completed his federal probation on January 25, 2002. In the first two years after release from federal prison in 2000 petitioner cared for his ill mother and after her demise he returned to Iran for approximately two years. Petitioner received his medical degree in Iran and returned there after being unable to find work in the medical field in the United States. Additionally, petitioner was barred from seeking reinstatement of his Certificate for 3 years after the effective date of its revocation. Further, due to his convictions, petitioner is barred from participation in the Medicare and Medi-Cal programs for 20 years.

7. Upon returning to Iran petitioner regained his Iranian medical license and practiced medicine for approximately 10 months. During that period of time petitioner worked in various clinics receiving no compensation. He was supported financially by relatives.¹ Petitioner stated during his testimony at the present hearing that his work during that period of time was rewarding especially since it was done without expectation of compensation. He believes the experience helped restore purpose and meaning to his practice of medicine. He recently returned to the United States and once again is unable to find work in the medical field. He is presently unemployed and is still supported through the family trust fund. Petitioner realizes that if his license is restored any practice will have to be

¹ As the eldest male child petitioner inherited all of the family assets, but relinquished all of his rights to other family members. In return a family trust fund was created and petitioner received and continues to receive funds through that fund. The fund is administered by family members and petitioner must request and receive approval for disbursement of any funds.

unconnected to Medicare or Medi-Cal. In his letter to the Board petitioner states that he does not intend to work as a solo practitioner, but would like to work part time for a hospital or clinic in the field of family practice. He expressed concern that restrictions on his license, if restored, would reduce his employment opportunities. However, he is willing to accept any terms and conditions imposed with any probationary Certificate.

8. Petitioner accepts full responsibility for his conduct and expressed sincere remorse for his actions. He has paid all costs associated with the prior disciplinary action. He also submitted letters from David Heskiaoff, M.D., a Board Certified Orthopedic Surgeon, and Herbert Rappaport, M.D., who is Board Certified in Internal Medicine and Medical Oncology. Dr. Heskiaoff has known petitioner since childhood and practiced medicine with him. He is aware of petitioner's criminal background, but speaks highly of his medical skills and professionalism, describing petitioner as an asset to the medical community. Dr. Rappaport treated petitioner's mother for cancer and is aware of his reputation in the medical community. He is aware of petitioner's criminal conviction for Medicare fraud, but believes him to be a competent physician with a good reputation and an asset to the medical community.

9. Petitioner also submitted excerpts from numerous letters that were originally presented at his sentencing hearing in federal court. These letters, largely from relatives, long-time friends and former patients (or their family members), described petitioner as a caring, compassionate and a capable physician.

10. Respondent has attempted to maintain currency with his Continuing Medical Education requirements since revocation of his license. Petitioner attends continuing medical education courses (CME) on a regular basis and accumulating in excess of 155 CME hours between April 29, 2000 and March 13, 2004. He is registered for and scheduled to take additional CME classes on May 22, 2004 (Alzheimers-3.5 hours) and June 18, 2004 (Primary Care Physician-16.2 hours). Petitioner also reads available medical journals and books. However, given the lack of current information about his clinical skills, the state of petitioner's professional competency is unknown.

11. While the conduct that resulted in revocation of respondent's license is quite serious, petitioner appears genuinely committed to returning to the practice of medicine. Based on his conduct since his conviction and the impact it has had on his life, the likelihood of reoccurrence of the behavior is considered unlikely. In petitioner's words he is desirous of being able to help people and "being able to look at my friends and relatives again; show them I can become an honest physician again" (sic). There are no quality of care issues that would prevent the restoration of petitioner's Certificate; and it is believed that a probationary Certificate, properly conditioned, would not be adverse to the public health, safety and welfare. In that regard, respondent has expressed a willingness to abide by any terms and conditions that the Board may wish to impose.

12. Petitioner has demonstrated that he is sufficiently rehabilitated such that restoration of his license with terms and conditions would be appropriate.

LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 2307(e) a Petition for Reinstatement of Revoked Certificate shall be evaluated by considering; (1) all activities of the petitioner since the disciplinary action was taken, (2) the offense for which the petitioner was disciplined, (3) petitioner's activities during the time the certificate was in good standing, (4) the petitioner's rehabilitative efforts, (5) his general reputation for truth and (6) his professional ability.

2. Title 16, California Code of Regulations, section 1360.2, lists criteria for rehabilitation to be examined in evaluating the merits of a petition for reinstatement of a revoked license. That regulation provides:

“When considering a petition for reinstatement of a license, certificate or permit holder pursuant to the provisions of section 11522 of the Government Code, the division or panel shall evaluate evidence of rehabilitation submitted by the petitioner considering the following criteria:

(a) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(b) Evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under section 480.

(c) The time that has elapsed since commission of the act(s) or crime(s) referred to in subsections (a) or (b).

(d) In the case of a suspension or revocation based upon the conviction of a crime, the criteria set forth in section 1360.1, subsections (b), (d) and (e).

(e) Evidence, if any, of rehabilitation submitted by the applicant.”

3. “[I]t is important to bear in mind that in a proceeding for the restoration of a revoked license, the burden at all times rests on the petitioner to prove that he has rehabilitated himself and is entitled to have his license restored.” *Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398. Respondent, as an applicant for reinstatement, “is not in the position of an untried newcomer, but a fallen licentiate.” *Flanzer, supra*. The standard of proof is clear and convincing evidence to a reasonable certainty. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084; *Feinstein v. State Bar* (1952) 39 Cal.2d 541.)

4. "It is elementary that a person seeking restoration of a revoked license has no greater rights than a person seeking an original license." *Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308, 312. It is only reasonable, however, "that the person seeking reinstatement ... should be required to present stronger proof of" rehabilitation. *Housman, supra* at p. 315. Such proof must be sufficient to overcome the Board's former adverse determination. *Tardiff v. State Bar* (1980) 27 Cal.3d 395; *Housman, supra* at pp. 315 – 316.

5. Under the circumstances described above and pursuant to the Factual Findings 1-13, it would not be contrary to the public interest to grant petitioner a probationary license subject to terms and conditions, which include a condition precedent to the commencement of the practice of medicine.

ORDER

Petitioner's Petition for Reinstatement of Revoked Physician and Surgeon's Certificate A-38412 is granted. However, upon reinstatement the Certificate shall be immediately revoked, with revocation stayed for a period of five (5) years during which time petitioner shall be placed on probation subject to the following terms and conditions:

1. Petitioner shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments and other orders.
2. Petitioner shall submit quarterly declarations under penalty of perjury on forms provided by the Division, stating whether there has been compliance with all the conditions of probation.
3. Petitioner shall comply with the Division's probation surveillance program. He shall, at all times, keep the Division informed of his addresses of business and residence which shall both serve as addresses of record. Changes of such addresses shall be immediately communicated in writing to the Division. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b). Petitioner shall, at all times, maintain a current and renewed physician and surgeon license. Petitioner shall also immediately inform the Division, in writing, of any travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) days.
4. Petitioner shall appear in person for interviews with the Division, its designee or its designated physician(s) upon request at various intervals and with reasonable notice.

5. In the event petitioner should leave California to reside or to practice outside the State or for any reason should petitioner stop practicing medicine in California, he shall notify the Division or its designee in writing within ten days of the dates of departure and return or the dates of non-practice within California. Non-practice is defined as any period of time exceeding thirty days in which respondent is not engaging in any activities defined in sections 2051 and 2052 of the Business and Professions Code. All time spent in an intensive training program approved by the Division or its designee shall be considered as time spent in the practice of medicine. A Board ordered suspension of practice shall not be considered as a period of non-practice. Periods of temporary or permanent residence or practice outside California or of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary order.

6. If petitioner violates probation in any respect, the Division, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against petitioner during probation, the Division shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

7. Following the effective date of this decision, if petitioner ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may voluntarily tender his certificate to the Board. The Division reserves the right to evaluate the petitioner's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the tendered license, petitioner will no longer be subject to the terms and conditions of probation.

8. Petitioner shall pay the costs associated with probation monitoring each and every year of probation as determined by the Division. Such costs shall be payable to the Division of Medical Quality and delivered to the designated probation surveillance monitor no later than January 31 of each calendar year. Failure to pay costs within 30 days of the due date shall constitute a violation of probation.

9. Within 90 days of the effective date of this decision, and on an annual basis thereafter, petitioner shall submit to the Division or its designee for its prior approval an educational program or course to be designated by the Division or its designee which shall be aimed at correcting any areas of deficient practice or knowledge which shall not be less than 40 hours per year, for each year of probation. This program shall be in addition to the Continuing Medical Education requirements for re-licensure. Following the completion of each course, the Division or its designee may administer an

examination to test petitioner's knowledge of the course. Petitioner shall provide proof of attendance for 65 hours of continuing medical education of which 40 hours were in satisfaction of this condition and were approved in advance by the Division or its designee.

10. Within 60 days of the effective date of this decision, petitioner shall enroll in a course in Ethics approved in advance by the Division or its designee, and shall successfully complete the course during the first year of probation.

11. Petitioner shall take and pass an oral clinical exam or written exam in her area of specialty to be administered by the Division, or its designee. This examination shall be taken within 60 days after the effective date of this decision. If petitioner fails the first examination, petitioner shall be allowed to take and pass a second examination, which may consist of a written as well as an oral examination. The waiting period between the first and second examinations shall be at least three months. If petitioner fails to pass the first and second examinations, petitioner may take a third and final examination after waiting a period of one year. Failure to pass the oral clinical examination within 18 months after the effective date of this decision shall constitute a violation of probation. Petitioner shall pay the costs of all examinations. For purposes of this condition, if petitioner is required to take and pass a written exam it shall be either the Special Purpose Examination (SPEX) or equivalent examination as determined by the Division or its designee.

Petitioner shall not practice medicine until petitioner has passed the required examination and has been so notified by the Division or its designee in writing. This prohibition shall not bar petitioner from practicing in a clinical training program approved by the Division, or its designee. Petitioner's practice of medicine shall be restricted only to that which is required by the approved training program.

12. Within 30 calendar days of the effective date of this decision or the acceptance of employment as a physician, whichever occurs later, petitioner shall submit to the Division or its designee for prior approval as a billing monitor, the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who is preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with petitioner, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Division, including but not limited to any form of bartering, shall be in petitioner's field of practice, and must agree to serve as petitioner's monitor. Petitioner shall pay all monitoring costs.

(NOTE: This term and condition of probation shall only apply to any employment where petitioner has billing responsibilities.)

The Division or its designee shall provide the approved monitor with copies of the Decision and Accusation, and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision, Accusation, and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision and Accusation, fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement.

Within 60 calendar days of the effective date of this Decision, and continuing throughout probation, petitioner's billing shall be monitored by the approved monitor. Petitioner shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

The monitor(s) shall submit a quarterly written report to the Division or its designee which includes an evaluation of petitioner's performance, indicating whether petitioner's practices are within the standards of practice of billing, and whether petitioner is billing appropriately.

It shall be the sole responsibility of respondent to ensure that the monitor submits the quarterly written reports to the Division or its designee within 10 calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, petitioner shall, within 5 calendar days of such resignation or unavailability, submit to the Division or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If petitioner fails to obtain approval of a replacement monitor within 60 days of the resignation or unavailability of the monitor, petitioner shall be suspended from the practice of medicine until a replacement monitor is approved and prepared to assume immediate monitoring responsibility. Petitioner shall cease the practice of medicine within 3 calendar days after being so notified by the Division or designee.

In lieu of a monitor, petitioner may participate in a professional enhancement program equivalent to the one offered by the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine, that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Petitioner shall participate in the professional enhancement program at respondent's expense during the term of probation.

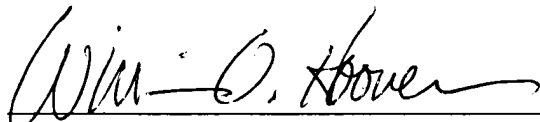
Failure to maintain all records, or to make all appropriate records available for immediate inspection and copying on the premises, or to comply with this condition as outlined above is a violation of probation.

13. During the period of probation petitioner is prohibited from engaging in the solo practice of medicine.

14. Within fifteen (15) days of the effective date of his probationary license, petitioner shall provide the Division, or its designee, proof of service that petitioner has served a true copy of this decision on the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to petitioner or where petitioner is employed to practice medicine and on the Chief Executive Officer at every insurance carrier where malpractice insurance coverage is extended to petitioner.

15. Upon successful completion of probation, petitioner's certificate shall be fully restored.

Dated: 5/25/04



WILLIAM O. HOOVER
Administrative Law Judge
Office of Administrative Hearings